

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

U.S. BANK NATIONAL
ASSOCIATION, as Trustee Relating
to Chevy Chase Funding LLC
Mortgage Backed Certificates Series
2006-2

Plaintiff,

v.

Case No: 2:16-cv-733-FtM-99CM

CHRISTOPHER J. SARARO,
ALFREDO J. SARARO, III ,
UNKNOWN SPOUSE OF
ALFREDO J. SARARO, III,
GRANDE EXCELSIOR AT THE
GRANDE PRESERVE
CONDOMINIUM ASSOCIATION,
INC., THE DUNES OF NAPLES
PROPERTY OWNERS
ASSOCIATION, INC., GRANDE
PRESERVE AT THE DUNES
COMMUNITY ASSOCIATION,
INC., CHICAGO TITLE
INSURANCE COMPANY, PNC
BANK, N.A., UNITED STATES OF
AMERICA DEPARTMENT OF
TREASURY, UNITED STATES
ATTORNEY, PARTIES IN
POSSESSION UNKNOWN
TENANT'35;1, PARTIES IN
POSSESSION UNKNOWN
TENANT '35;2 and SUMMER
PARHAM SARARO,

Defendants.

ORDER

This matter comes before the Court upon review of Plaintiff's Motions for Default by the Clerk (Docs. 87, 88) filed on April 24, 2017. Plaintiff seeks a Clerk's entry of default as to Defendants Parties in Possession Unknown Tenant #1 n/k/a Marissa Gorman ("Gorman") and PNC Bank, N.A., Successor by Merger to National City Bank ("PNC Bank"). Docs. 87, 88. Plaintiff filed a Return of Service as to PNC Bank on September 29, 2016 and a Return of Service as to Gorman on October 4, 2016. Docs. 21, 29.

On September 26, 2016, Plaintiff filed a Verified Complaint for Foreclosure ("Complaint"). Doc. 1. On October 19, 2016, Senior United States District Judge John E. Steele dismissed the Complaint for lack of subject-matter jurisdiction and directed Plaintiff to file an amended complaint. Doc. 43. On October 25, 2016, Plaintiff filed an Amended Verified Complaint for Foreclosure ("Amended Complaint") against various defendants including Gorman and PNC Bank. Doc. 46.

Pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." Similarly, Middle District of Florida Local Rule 1.07(b) provides:

When service of process has been effected but no appearance or response is made within the time and manner provided by Rule 12, Fed. R. Civ. P., the party effecting service shall promptly apply to the Clerk for entry of default pursuant to Rule 55(a), Fed. R. Civ. P.

M.D. Fla. R. 1.07(b). Prior to directing the Clerk to enter a default, the Court must first determine whether Plaintiff properly effected service of process. *United States*

v. Donald, No. 3:09-cv-147-J-32HTS, 2009 WL 1810357, at *1 (M.D. Fla. June 24, 2009).

With regard to Gorman, the Federal Rules of Civil Procedure allow for personal service upon an individual within a judicial district of the United States. Fed. R. Civ. P. 4(e)(2)(A). The process server may deliver a copy of the summons and complaint to the individual personally, or “at the individual’s dwelling or usual place of abode or with someone of suitable age and discretion who resides there.” Fed. R. Civ. P. 4(e)(2)(A),(B). Alternatively, the Court may follow “state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made.” Fed. R. Civ. P. 4(e)(1). In Florida, service of original process may be made on an individual by leaving a copy of the complaint, petition, or other initial pleading “at his or her usual place of abode with any person residing therein who is fifteen years of age or older and informing the person of their contents.” Fla. Stat. § 48.031(1)(a).

Here, the Return of Service states that on October 1, 2016, a process server for ATA Process, LLC delivered a true copy of the Summons, Notice of Lis Pendens, and the Complaint with Exhibits A, B, C, D, E to Gorman’s 17 year old son, Aiden Gorman, who also is a co-resident, at 285 Grande Way, Unit #604, Naples, FL 34110. Doc. 29. Affidavits by process servers constitute a prima facie showing that defendants have been served. *Udoinyon v. The Guardian Security*, 440 F. App’x 731, 735 (11th Cir. 2011) (unsworn and unsigned letters insufficient to call into question prima facie evidence of service consisting of process server’s sworn return); *Burger King Corp. v.*

Eupierre, Case No. 12-20197-CIV, 2012 WL 2192438, at *2 (S.D. Fla. June 14, 2012). Service of process therefore was properly effected under Rule 4(e) of the Federal Rules of Civil Procedure.

Furthermore, Plaintiff properly served the Amended Complaint upon Gorman. Doc. 88 at 2. Rule 5(a)(1)(B) states that a pleading filed after the original complaint must be served on every party unless ordered otherwise by the Court. Fed. R. Civ. P. 5(a)(1)(B). Under Rule 5(b), a party may serve an amended complaint by mailing it to the person's last known address. Fed. R. Civ. P. 5(b)(2)(C). Service under Rule 5(b) is allowed when the amended complaint does not assert new claims for relief. *Amarelis v. Notter Sch. of Culinary Arts, LLC*, No. 6:13-cv-54-Orl-31KRS, 2014 WL 5454387, at *3 (M.D. Fla. Oct. 27, 2014). Here, the Amended Complaint does not allege new claims or claims against new parties. Docs. 1, 46. The Complaint and the Amended Complaint allege Counts One of Foreclosure, Two of Equitable Lien, and Three of Breach of Note against the same thirteen defendants. Docs. 1, 46. As a result, Plaintiff is permitted to serve a copy of the Amended Complaint on Gorman by mailing it to Gorman's last known address. *See Amarelis*, 2014 WL 5454387, at *3; Doc. 88 at 2.

Pursuant to Rule 12(a)(1)(A) of the Federal Rules of Civil Procedure, a defendant must serve an answer within 21 days after being served with the summons and complaint. Gorman has failed to do so within the time period; therefore, entry of Clerk's Default pursuant to Rule 55(a) of the Federal Rules of Civil Procedure and Middle District of Florida Local Rule 1.07(b) is appropriate.

With regard to PNC Bank, service on a corporation or other unincorporated association can be made by any manner accepted in the state or “by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process[.]” Fed. R. Civ. P. 4(h)(1)(A), (e)(1). Section 655.0201(2) of the Florida Statutes outlines service of process on a financial institutions and states: “A financial institution authorized by federal or state law to transact business in this state may designate with the Department of State a place or registered agent located within the state as the financial institution’s sole location or agent for service of process, notice, levy, or demand.” Fla. Stat. § 655.0201(2). If a financial institution has no registered agent or service cannot be made in accordance with the above section, then “service may be made to any officer, director, or business agent of the financial institution at its principal place of business or at any other branch, office, or place of business in the state.” Fla. Stat. § 655.0201(3).

Here, it is not clear whether Plaintiff properly served PNC Bank pursuant to Rule 4(h). Fed. R. Civ. P. 4(h)(1)(A), (e)(1). The Return of Service states that on September 27, 2016, a process server for ATA Process, LLC delivered a true copy of the Summons, Notice of Lis Pendens, and the Complaint with Exhibits A, B, C, D, E to Noel Arteaga, as “universal banker” of the corporation, at 1915 N. Dale Maybry Highway, Tampa, FL 33607. Doc. 21. Although Rule 4(h) provides various ways to serve PNC Bank, Plaintiff does not explain which subsection of Rule 4(h) applies to Plaintiff’s service of process upon PNC Bank. Doc. 87. Plaintiff also does not

demonstrate that Noel Arteaga, as a universal banker of PNC Bank, is an agent or officer permitted to receive process on behalf of PNC Bank under Rule 4(h). *Id.*

ACCORDINGLY, it is hereby

ORDERED:

1. Plaintiff's Motion for Default by the Clerk as to Defendant PNC Bank, N.A., Successor by Merger to National City Bank (Doc. 87) is **DENIED without prejudice.**

2. Plaintiff's Motion for Default by the Clerk as to Defendant Parties in Possession Unknown Tenant #1 n/k/a Marissa Gorman (Doc. 88) is **GRANTED.**

3. The Clerk is directed to enter a Clerk's Default against Defendant Parties in Possession Unknown Tenant #1 n/k/a Marissa Gorman.

DONE and **ORDERED** in Fort Myers, Florida on this 26th day of April, 2017.


CAROL MIRANDO
United States Magistrate Judge

Copies:
Counsel of record